

AMENDED IN ASSEMBLY MARCH 17, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2440

Introduced by Assembly Member Gatto

February 19, 2016

An act to ~~amend Section 1524 of the Penal Code, amend Section 76104.6 of, and to add Section 76104.8 to, the Government Code, relating to criminal procedure; public safety.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 2440, as amended, Gatto. ~~Search warrants.—County DNA Identification Fund: penalty assessment.~~

Existing law requires a penalty of \$1 for every \$10 or part thereof to be levied in each county upon every fine, penalty, or forfeiture imposed and collected by the court for all criminal offenses, as specified. Existing law requires the county board of supervisors to establish a DNA Identification Fund in the county treasury into which the additional penalty is deposited. Existing law requires the county treasurer to transfer a specified amount from that fund to the Controller for credit to the state's DNA Identification Fund. Existing law specifies the purposes for which the remaining funds in the county's DNA Identification Fund may be used.

This bill would create an additional penalty of \$4 for every \$10 or part thereof to be levied in each county upon every fine, penalty, or forfeiture imposed and collected by the court for specified offenses, including, among others, misdemeanor and felony offenses, misdemeanor violations of any city, county, or city and county ordinance, and violations of the Penal Code initially charged as a misdemeanor and reduced to an infraction. The bill would require this

penalty to be deposited into the county DNA Identification Fund and would require the county treasurer to distinguish moneys collected pursuant to this penalty from other penalty assessments. The bill would require the money from this penalty to be used, upon a resolution by the board of supervisors, to assist local law enforcement agencies with the investigation of specified cases involving DNA evidence. The bill would require the district attorney to publicize, as specified, when an investigation using these funds results in a solved case. The bill would also make conforming changes. Because this bill would require county officials to perform additional duties, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

~~Existing law provides that a search warrant may only be issued upon probable cause, supported by affidavit, naming or describing the person to be searched or searched for, and particularly describing the property, thing, or things and the place to be searched. Existing law also states the grounds upon which a search warrant may be issued.~~

~~This bill would make technical, nonsubstantive changes to those provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 76104.6 of the Government Code is
- 2 amended to read:
- 3 76104.6. (a) (1) Except as otherwise provided in this section,
- 4 for the purpose of implementing the DNA Fingerprint, Unsolved
- 5 Crime and Innocence Protection Act (Proposition 69), as approved
- 6 by the voters at the November 2, 2004, statewide general election,
- 7 there shall be levied an additional penalty of one dollar (\$1) for
- 8 every ten dollars (\$10), or part of ten dollars (\$10), in each county
- 9 upon every fine, penalty, or forfeiture imposed and collected by

1 the ~~courts~~ court for all criminal offenses, including all offenses
2 involving a violation of the Vehicle Code or a local ordinance
3 adopted pursuant to the Vehicle Code.

4 (2) The penalty imposed by this section shall be collected
5 together with and in the same manner as the amounts established
6 by Section 1464 of the Penal Code. The moneys shall be taken
7 from fines and forfeitures deposited with the county treasurer prior
8 to any division pursuant to Section 1463 of the Penal Code. The
9 board of supervisors shall establish in the county treasury a DNA
10 Identification Fund into which shall be deposited the moneys
11 collected pursuant to this section. ~~The~~ *Except as otherwise provided*
12 *in Section 76104.8, the* moneys of the fund shall be allocated
13 pursuant to subdivision (b).

14 (3) The additional penalty does not apply to the following:

15 (A) A restitution fine.

16 (B) A penalty authorized by Section 1464 of the Penal Code or
17 this chapter.

18 (C) A parking offense subject to Article 3 (commencing with
19 Section 40200) of Chapter 1 of Division 17 of the Vehicle Code.

20 (D) The state surcharge authorized by Section 1465.7 of the
21 Penal Code.

22 (b) (1) The fund moneys described in subdivision (a), together
23 with any interest earned thereon, shall be held by the county
24 treasurer separate from any funds subject to transfer or division
25 pursuant to Section 1463 of the Penal Code. Deposits to the fund
26 may continue through and including the 20th year after the initial
27 calendar year in which the surcharge is collected, or longer if and
28 as necessary to make payments upon any lease or leaseback
29 arrangement utilized to finance any of the projects specified herein.

30 (2) ~~On~~ *Except as otherwise provided in Section 76104.8, on the*
31 last day of each calendar quarter of the year specified in this
32 subdivision, the county treasurer shall transfer fund moneys in the
33 county's DNA Identification Fund to the Controller for credit to
34 the state's DNA Identification Fund, which is hereby established
35 in the State Treasury, as follows:

36 (A) In the first two calendar years following the effective date
37 of this section, 70 percent of the amounts collected, including
38 interest earned thereon.

1 (B) In the third calendar year following the effective date of
2 this section, 50 percent of the amounts collected, including interest
3 earned thereon.

4 (C) In the fourth calendar year following the effective date of
5 this section and in each calendar year thereafter, 25 percent of the
6 amounts collected, including interest earned thereon.

7 (3) ~~Funds~~ *Except as otherwise provided in Section 76104.8,*
8 *funds* remaining in the county's DNA Identification Fund shall be
9 used only for the following purposes:

10 (A) To reimburse local sheriff or other law enforcement agencies
11 for the collection of DNA specimens, samples, and print
12 impressions pursuant to this chapter.

13 (B) For expenditures and administrative costs made or incurred
14 to comply with the requirements of paragraph (5) of subdivision
15 (b) of Section 298 of the Penal Code, including the procurement
16 of equipment and software integral to confirming that a person
17 qualifies for entry into the Department of Justice DNA and Forensic
18 Identification Database and Data Bank Program.

19 (C) To reimburse local sheriff, police, district attorney, and
20 regional state crime laboratories for expenditures and
21 administrative costs made or incurred in connection with the
22 processing, analysis, tracking, and storage of DNA crime scene
23 samples from cases in which DNA evidence would be useful in
24 identifying or prosecuting suspects, including the procurement of
25 equipment and software for the processing, analysis, tracking, and
26 storage of DNA crime scene samples from unsolved cases.

27 (D) (i) If authorized by a resolution of the board of supervisors,
28 and after the distributions provided in subparagraphs (A), (B), and
29 (C), a local sheriff or police department, or the district attorney's
30 office, may use remaining funds, either independently or in
31 combination with remaining funds from another county, to provide
32 supplemental funding to a qualified local or regional state forensic
33 laboratory for expenditures and administrative costs made or
34 incurred in connection with the processing, analysis, and
35 comparison of DNA crime scene samples and forensic
36 identification samples, and testimony related to that analysis. This
37 subparagraph shall apply only to those counties that do not have
38 a local public law enforcement laboratory, and does not authorize
39 any transfer that will interfere with the operation of subparagraph
40 (A). Any supplemental funding provided pursuant to this

1 subparagraph shall not be used to supplant funds already allocated
2 to a qualified local or regional state forensic laboratory by the
3 state's DNA Identification Fund.

4 (ii) For purposes of this subparagraph, a qualified local or
5 regional state forensic laboratory is a Department of Justice
6 regional forensic laboratory or a local law enforcement agency
7 forensic laboratory that meets state and federal requirements for
8 contributing DNA profiles for inclusion in California's DNA
9 databank, including the FBI Quality Assurance Standards and
10 accreditation requirements, and shall be accredited by an
11 organization approved by the National DNA Index System (NDIS)
12 Procedures Board.

13 (4) The state's DNA Identification Fund shall be administered
14 by the Department of Justice. Funds in the state's DNA
15 Identification Fund, upon appropriation by the Legislature, shall
16 be used by the Attorney General only to support DNA testing in
17 the state and to offset the impacts of increased testing and shall be
18 allocated as follows:

19 (A) Of the amount transferred pursuant to subparagraph (A) of
20 paragraph (2) of subdivision (b), 90 percent to the Department of
21 Justice DNA Laboratory, first, to comply with the requirements
22 of Section 298.3 of the Penal Code and, second, for expenditures
23 and administrative costs made or incurred in connection with the
24 processing, analysis, tracking, and storage of DNA specimens and
25 samples including the procurement of equipment and software for
26 the processing, analysis, tracking, and storage of DNA samples
27 and specimens obtained pursuant to the DNA and Forensic
28 Identification Database and Data Bank Act of 1998, as amended
29 by Chapter 6 (commencing with Section 295) of Title 9 of Part 1
30 of the Penal Code, and 10 percent to the Department of Justice
31 Information Bureau Criminal History Unit for expenditures and
32 administrative costs that have been approved by the Chief of the
33 Department of Justice Bureau of Forensic Services made or
34 incurred to update equipment and software to facilitate compliance
35 with the requirements of subdivision (e) of Section 299.5 of the
36 Penal Code.

37 (B) Of the amount transferred pursuant to subparagraph (B) of
38 paragraph (2) of subdivision (b), funds shall be allocated by the
39 Department of Justice DNA Laboratory, first, to comply with the
40 requirements of Section 298.3 of the Penal Code and, second, for

1 expenditures and administrative costs made or incurred in
2 connection with the processing, analysis, tracking, and storage of
3 DNA specimens and samples including the procurement of
4 equipment and software for the processing, analysis, tracking, and
5 storage of DNA samples and specimens obtained pursuant to the
6 DNA and Forensic Identification Database and Data Bank Act of
7 1998, as amended.

8 (C) Of the amount transferred pursuant to subparagraph (C) of
9 paragraph (2) of subdivision (b), funds shall be allocated by the
10 Department of Justice to the DNA Laboratory to comply with the
11 requirements of Section 298.3 of the Penal Code and for
12 expenditures and administrative costs made or incurred in
13 connection with the processing, analysis, tracking, and storage of
14 DNA specimens and samples including the procurement of
15 equipment and software for the processing, analysis, tracking, and
16 storage of DNA samples and specimens obtained pursuant to the
17 DNA and Forensic Identification Database and Data Bank Act of
18 1998, as amended.

19 (c) On or before April 1 in the year following adoption of this
20 section, and annually thereafter, the board of supervisors of each
21 county shall submit a report to the Legislature and the Department
22 of Justice. The report shall include the total amount of fines
23 collected and allocated pursuant to this section, and the amounts
24 expended by the county for each program authorized pursuant to
25 paragraph (3) of subdivision (b). The Department of Justice shall
26 make the reports publicly available on the department's Internet
27 Web site.

28 (d) All requirements imposed on the Department of Justice
29 pursuant to the DNA Fingerprint, Unsolved Crime and Innocence
30 Protection Act are contingent upon the availability of funding and
31 are limited by revenue, on a fiscal year basis, received by the
32 Department of Justice pursuant to this section and any additional
33 appropriation approved by the Legislature for purposes related to
34 implementing this act.

35 (e) Upon approval of the DNA Fingerprint, Unsolved Crime
36 and Innocence Protection Act, the Legislature shall lend the
37 Department of Justice General Fund in the amount of seven million
38 dollars (\$7,000,000) for purposes of implementing the act. The
39 loan shall be repaid with interest calculated at the rate earned by
40 the Pooled Money Investment Account at the time the loan is made.

Principal and interest on the loan shall be repaid in full no later than four years from the date the loan was made and shall be repaid from revenue generated pursuant to this section.

(f) Notwithstanding any other law, the Controller may use the state's DNA Identification Fund, created pursuant to paragraph (2) of subdivision (b), for loans to the General Fund as provided in Sections 16310 and 16381. Any such loan shall be repaid from the General Fund with interest computed at 110 percent of the Pooled Money Investment Account rate, with the interest commencing to accrue on the date the loan is made from the fund. This subdivision does not authorize any transfer that will interfere with the carrying out of the object for which the state's DNA Identification Fund was created.

SEC. 2. Section 76104.8 is added to the Government Code, to read:

76104.8. (a) Except as otherwise provided in this section, in addition to the penalties levied pursuant to Sections 76104.6 and 76104.7, there shall be levied an additional penalty of four dollars (\$4) for every ten dollars (\$10), or part of ten dollars (\$10), in each county upon every fine, penalty, or forfeiture imposed and collected by the court for all of the following offenses:

(1) A misdemeanor or felony offense.

(2) A misdemeanor violation of any city, county, or city and county ordinance.

(3) A violation of the Penal Code initially charged as a misdemeanor and reduced to an infraction.

(4) A traffic violation of the Vehicle Code initially charged as a felony or misdemeanor and reduced to an infraction.

(5) A violation of subdivision (b) of Section 11357 of the Health and Safety Code.

(b) The penalty shall be collected together with, and in the same manner as, the amounts established by Section 1464 of the Penal Code. These funds shall be deposited into the county treasury DNA Identification Fund by the county treasurer, who shall clearly distinguish moneys collected under this section from moneys collected under Section 76104.6, and shall be disbursed upon a resolution by the board of supervisors. The objective and intent of the resolution shall be to assist the county sheriff, district attorney, and other local law enforcement agencies with the investigations of cases described in subdivision (d).

1 (c) *The penalty does not apply to the following:*

2 (1) *A restitution fine.*

3 (2) *A penalty authorized by this chapter or by Section 1464 of*
4 *the Penal Code.*

5 (3) *A parking offense subject to Article 3 (commencing with*
6 *Section 40200) of Chapter 1 of Division 17 of the Vehicle Code.*

7 (4) *The state surcharge authorized by Section 1465.7 of the*
8 *Penal Code.*

9 (d) *Funds collected pursuant to this section shall only be used*
10 *for the following purposes:*

11 (1) *To assist law enforcement agencies within the county,*
12 *including local sheriff and district attorney agencies, with the*
13 *identification, review, and investigation of unsolved serious or*
14 *violent cold cases to determine if biological evidence exists that*
15 *could provide a DNA investigative lead to law enforcement,*
16 *including, but not limited to, the DNA profile of a putative suspect*
17 *that could be uploaded into national, state, local, or other law*
18 *enforcement DNA databases, and when more than three years*
19 *have elapsed since the date of violation of the cold case crime.*

20 (2) *To assist law enforcement agencies within the county,*
21 *including local sheriff and district attorney agencies, with the*
22 *investigation of cases where crime scene biological evidence has*
23 *been collected and analyzed and a DNA profile that could provide*
24 *an investigative lead to law enforcement agencies, including, but*
25 *not limited to, the DNA profile of a putative suspect, has been*
26 *generated and uploaded into national, state, local, or other law*
27 *enforcement DNA databases and a DNA match has resulted in the*
28 *identification of a putative suspect or a match to a DNA profile*
29 *from another crime scene.*

30 (e) *The district attorney shall publicize on its Internet Web site*
31 *and notify the local media every time an investigation that receives*
32 *funding from the penalty assessment described in subdivision (a)*
33 *results in a solved case.*

34 SEC. 3. *If the Commission on State Mandates determines that*
35 *this act contains costs mandated by the state, reimbursement to*
36 *local agencies and school districts for those costs shall be made*
37 *pursuant to Part 7 (commencing with Section 17500) of Division*
38 *4 of Title 2 of the Government Code.*

39 ~~SECTION 1. Section 1524 of the Penal Code is amended to~~
40 ~~read:~~

1 ~~1524. (a) A search warrant may be issued upon any of the~~
2 ~~following grounds:~~

3 ~~(1) When the property was stolen or embezzled.~~

4 ~~(2) When the property or things were used as the means of~~
5 ~~committing a felony.~~

6 ~~(3) When the property or things are in the possession of a person~~
7 ~~with the intent to use them as a means of committing a public~~
8 ~~offense, or in the possession of another to whom he or she may~~
9 ~~have delivered them for the purpose of concealing them or~~
10 ~~preventing them from being discovered.~~

11 ~~(4) When the property or things to be seized consist of an item~~
12 ~~or constitute evidence that tends to show a felony has been~~
13 ~~committed, or tends to show that a particular person has committed~~
14 ~~a felony.~~

15 ~~(5) When the property or things to be seized consist of evidence~~
16 ~~that tends to show that sexual exploitation of a child, in violation~~
17 ~~of Section 311.3, or possession of matter depicting sexual conduct~~
18 ~~of a person under 18 years of age, in violation of Section 311.11,~~
19 ~~has occurred or is occurring.~~

20 ~~(6) When there is a warrant to arrest a person.~~

21 ~~(7) When a provider of electronic communication service or~~
22 ~~remote computing service has records or evidence, as specified in~~
23 ~~Section 1524.3, showing that property was stolen or embezzled~~
24 ~~constituting a misdemeanor, or that property or things are in the~~
25 ~~possession of a person with the intent to use them as a means of~~
26 ~~committing a misdemeanor public offense, or in the possession of~~
27 ~~another to whom he or she may have delivered them for the purpose~~
28 ~~of concealing them or preventing their discovery.~~

29 ~~(8) When the property or things to be seized include an item or~~
30 ~~evidence that tends to show a violation of Section 3700.5 of the~~
31 ~~Labor Code, or tends to show that a particular person has violated~~
32 ~~Section 3700.5 of the Labor Code.~~

33 ~~(9) When the property or things to be seized include a firearm~~
34 ~~or other deadly weapon at the scene of, or at the premises occupied~~
35 ~~or under the control of the person arrested in connection with, a~~
36 ~~domestic violence incident involving a threat to human life or a~~
37 ~~physical assault as provided in Section 18250. This section does~~
38 ~~not affect warrantless seizures otherwise authorized by Section~~
39 ~~18250.~~

1 ~~(10) When the property or things to be seized include a firearm~~
2 ~~or other deadly weapon that is owned by, or in the possession of,~~
3 ~~or in the custody or control of, a person described in subdivision~~
4 ~~(a) of Section 8102 of the Welfare and Institutions Code.~~

5 ~~(11) When the property or things to be seized include a firearm~~
6 ~~that is owned by, or in the possession of, or in the custody or~~
7 ~~control of, a person who is subject to the prohibitions regarding~~
8 ~~firearms pursuant to Section 6389 of the Family Code, if a~~
9 ~~prohibited firearm is possessed, owned, in the custody of, or~~
10 ~~controlled by a person against whom a protective order has been~~
11 ~~issued pursuant to Section 6218 of the Family Code, the person~~
12 ~~has been lawfully served with that order, and the person has failed~~
13 ~~to relinquish the firearm as required by law.~~

14 ~~(12) When the information to be received from the use of a~~
15 ~~tracking device constitutes evidence that tends to show that either~~
16 ~~a felony, a misdemeanor violation of the Fish and Game Code, or~~
17 ~~a misdemeanor violation of the Public Resources Code has been~~
18 ~~committed or is being committed, tends to show that a particular~~
19 ~~person has committed a felony, a misdemeanor violation of the~~
20 ~~Fish and Game Code, or a misdemeanor violation of the Public~~
21 ~~Resources Code, or is committing a felony, a misdemeanor~~
22 ~~violation of the Fish and Game Code, or a misdemeanor violation~~
23 ~~of the Public Resources Code, or will assist in locating an~~
24 ~~individual who has committed or is committing a felony, a~~
25 ~~misdemeanor violation of the Fish and Game Code, or a~~
26 ~~misdemeanor violation of the Public Resources Code. A tracking~~
27 ~~device search warrant issued pursuant to this paragraph shall be~~
28 ~~executed in a manner meeting the requirements specified in~~
29 ~~subdivision (b) of Section 1534.~~

30 ~~(13) When a sample of the blood of a person constitutes~~
31 ~~evidence that tends to show a violation of Section 23140, 23152,~~
32 ~~or 23153 of the Vehicle Code and the person from whom the~~
33 ~~sample is being sought has refused an officer's request to submit~~
34 ~~to, or has failed to complete, a blood test as required by Section~~
35 ~~23612 of the Vehicle Code, and the sample will be drawn from~~
36 ~~the person in a reasonable, medically approved manner. This~~
37 ~~paragraph is not intended to abrogate a court's mandate to~~
38 ~~determine the propriety of the issuance of a search warrant on a~~
39 ~~case-by-case basis.~~

1 ~~(14) Beginning January 1, 2016, the property or things to be~~
2 ~~seized are firearms or ammunition or both that are owned by, in~~
3 ~~the possession of, or in the custody or control of a person who is~~
4 ~~the subject of a gun violence restraining order that has been issued~~
5 ~~pursuant to Division 3.2 (commencing with Section 18100) of~~
6 ~~Title 2 of Part 6, if a prohibited firearm or ammunition or both is~~
7 ~~possessed, owned, in the custody of, or controlled by a person~~
8 ~~against whom a gun violence restraining order has been issued;~~
9 ~~the person has been lawfully served with that order, and the person~~
10 ~~has failed to relinquish the firearm as required by law.~~

11 ~~(15) When the property or things to be seized are controlled~~
12 ~~substances or a device, contrivance, instrument, or paraphernalia~~
13 ~~used for unlawfully using or administering a controlled substance~~
14 ~~pursuant to the authority described in Section 11472 of the Health~~
15 ~~and Safety Code.~~

16 ~~(16) (A) When all of the following apply:~~

17 ~~(i) A sample of the blood of a person constitutes evidence that~~
18 ~~tends to show a violation of subdivision (b), (c), (d), (e), or (f) of~~
19 ~~Section 655 of the Harbors and Navigation Code.~~

20 ~~(ii) The person from whom the sample is being sought has~~
21 ~~refused an officer's request to submit to, or has failed to complete,~~
22 ~~a blood test as required by Section 655.1 of the Harbors and~~
23 ~~Navigation Code.~~

24 ~~(iii) The sample will be drawn from the person in a reasonable,~~
25 ~~medically approved manner.~~

26 ~~(B) This paragraph is not intended to abrogate a court's mandate~~
27 ~~to determine the propriety of the issuance of a search warrant on~~
28 ~~a case-by-case basis.~~

29 ~~(b) The property, things, person, or persons described in~~
30 ~~subdivision (a) may be taken on the warrant from any place, or~~
31 ~~from any person in whose possession the property or things may~~
32 ~~be.~~

33 ~~(c) Notwithstanding subdivision (a) or (b), no search warrant~~
34 ~~shall issue for any documentary evidence in the possession or~~
35 ~~under the control of a person who is a lawyer as defined in Section~~
36 ~~950 of the Evidence Code, a physician as defined in Section 990~~
37 ~~of the Evidence Code, a psychotherapist as defined in Section 1010~~
38 ~~of the Evidence Code, or a member of the clergy as defined in~~
39 ~~Section 1030 of the Evidence Code, and who is not reasonably~~
40 ~~suspected of engaging or having engaged in criminal activity~~

1 related to the documentary evidence for which a warrant is
2 requested unless the following procedure has been complied with:

3 (1) At the time of the issuance of the warrant, the court shall
4 appoint a special master in accordance with subdivision (d) to
5 accompany the person who will serve the warrant. Upon service
6 of the warrant, the special master shall inform the party served of
7 the specific items being sought and that the party shall have the
8 opportunity to provide the items requested. If the party, in the
9 judgment of the special master, fails to provide the items requested,
10 the special master shall conduct a search for the items in the areas
11 indicated in the search warrant.

12 (2) (A) If the party who has been served states that an item or
13 items should not be disclosed, they shall be sealed by the special
14 master and taken to court for a hearing.

15 (B) At the hearing, the party searched shall be entitled to raise
16 any issues that may be raised pursuant to Section 1538.5 as well
17 as a claim that the item or items are privileged, as provided by
18 law. The hearing shall be held in the superior court. The court shall
19 provide sufficient time for the parties to obtain counsel and make
20 motions or present evidence. The hearing shall be held within three
21 days of the service of the warrant unless the court makes a finding
22 that the expedited hearing is impracticable. In that case, the matter
23 shall be heard at the earliest possible time.

24 (C) If an item or items are taken to court for a hearing, any
25 limitations of time prescribed in Chapter 2 (commencing with
26 Section 799) of Title 3 of Part 2 shall be tolled from the time of
27 the seizure until the final conclusion of the hearing, including any
28 associated writ or appellate proceedings.

29 (3) The warrant shall, whenever practicable, be served during
30 normal business hours. In addition, the warrant shall be served
31 upon a party who appears to have possession or control of the
32 items sought. If, after reasonable efforts, the party serving the
33 warrant is unable to locate the person, the special master shall seal
34 and return to the court, for determination by the court, any item
35 that appears to be privileged as provided by law.

36 (d) (1) As used in this section, a “special master” is an attorney
37 who is a member in good standing of the California State Bar and
38 who has been selected from a list of qualified attorneys that is
39 maintained by the State Bar particularly for the purposes of
40 conducting the searches described in this section. These attorneys

1 shall serve without compensation. A special master shall be
2 considered a public employee, and the governmental entity that
3 caused the search warrant to be issued shall be considered the
4 employer of the special master and the applicable public entity,
5 for purposes of Division 3.6 (commencing with Section 810) of
6 Title 1 of the Government Code, relating to claims and actions
7 against public entities and public employees. In selecting the
8 special master, the court shall make every reasonable effort to
9 ensure that the person selected has no relationship with any of the
10 parties involved in the pending matter. Information obtained by
11 the special master shall be confidential and may not be divulged
12 except in direct response to inquiry by the court.

13 (2) In any case in which the magistrate determines that, after
14 reasonable efforts have been made to obtain a special master, a
15 special master is not available and would not be available within
16 a reasonable period of time, the magistrate may direct the party
17 seeking the order to conduct the search in the manner described
18 in this section in lieu of the special master.

19 (e) Any search conducted pursuant to this section by a special
20 master may be conducted in a manner that permits the party serving
21 the warrant or his or her designee to accompany the special master
22 as he or she conducts his or her search. However, that party or his
23 or her designee may not participate in the search nor shall he or
24 she examine any of the items being searched by the special master
25 except upon agreement of the party upon whom the warrant has
26 been served.

27 (f) As used in this section, “documentary evidence” includes,
28 but is not limited to, writings, documents, blueprints, drawings,
29 photographs, computer printouts, microfilms, X-rays, files,
30 diagrams, ledgers, books, tapes, audio and video recordings, films,
31 and papers of any type or description.

32 (g) No warrant shall issue for any item or items described in
33 Section 1070 of the Evidence Code.

34 (h) Notwithstanding any other law, no claim of attorney work
35 product as described in Chapter 4 (commencing with Section
36 2018.010) of Title 4 of Part 4 of the Code of Civil Procedure shall
37 be sustained where there is probable cause to believe that the
38 lawyer is engaging or has engaged in criminal activity related to
39 the documentary evidence for which a warrant is requested unless
40 it is established at the hearing with respect to the documentary

1 ~~evidence seized under the warrant that the services of the lawyer~~
2 ~~were not sought or obtained to enable or aid anyone to commit or~~
3 ~~plan to commit a crime or a fraud.~~

4 ~~(i) Nothing in this section is intended to limit an attorney's~~
5 ~~ability to request an in-camera hearing pursuant to the holding of~~
6 ~~the Supreme Court of California in People v. Superior Court (Laff)~~
7 ~~(2001) 25 Cal.4th 703.~~

8 ~~(j) In addition to any other circumstance permitting a magistrate~~
9 ~~to issue a warrant for a person or property in another county, when~~
10 ~~the property or things to be seized consist of any item or constitute~~
11 ~~evidence that tends to show a violation of Section 530.5, the~~
12 ~~magistrate may issue a warrant to search a person or property~~
13 ~~located in another county if the person whose identifying~~
14 ~~information was taken or used resides in the same county as the~~
15 ~~issuing court.~~

16 ~~(k) This section shall not be construed to create a cause of action~~
17 ~~against any foreign or California corporation, its officers,~~
18 ~~employees, agents, or other specified persons for providing location~~
19 ~~information.~~